

NATIONAL CANNERS ASSOCIATION



Information Letter



FOR N. C. A. MEMBERS

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Information for Canners Doing Business in Several States

The general practice of corporations with regard to taking out a license or being registered in all states in which they are doing business, being of vital importance to all canners, we have submitted the question to our general counsel, Covington, Burling & Rublee, and they state as follows:

"This is one of the most difficult questions that must be decided by a corporation. There are various penalties for not registering within a state in which business is being done. On the other hand, a company which does a national business might have to register in forty-eight states in order to comply strictly with the law, which obviously would be expensive and burdensome. The question of whether or not business is being done within any particular state is always a difficult one to decide.

"For practical purposes, however, our advice would be as follows:

"First, the corporation should decide in a general way in what states it is doing business. If a corporation maintains an office within a state or keeps a stock of goods within a state, it is certainly doing business within that state. If its sales are all made by mail and its deliveries made direct to its purchasers it would certainly be doing interstate business and would not have to qualify. Between these two extremes, there are many situations which are more doubtful, and these are covered by the following memorandum:

"Assuming that the corporation is doing business within a state there are various penalties provided by the different state laws for not registering. These penalties vary widely but in many states it is provided that there are fines for a corporation or its officers for doing business without registering, and in many states it is provided that contracts will be void if made by a corporation which is not registered. It seems to us, however, as a practical matter that the expense, difficulty and inconvenience of qualifying to do business in the various states is disproportionate to any trouble that the corporation is likely to get into on account of not qualifying. Probably the company would be warned before it got into any serious difficulties with the criminal provision, and disputes about contracts would very seldom come up.

"While any corporation might get into difficulty if it had not qualified in the state, nevertheless, we would advise that a corporation in the canning business do not qualify unless it is clearly doing business in a state by reason of having a branch office there or keeping a stock of its own goods in the state from which sales are made."

Doing Business Within a State.

"It is safe to say that a corporation does not do business within a state either (a) where no business is in fact done by it within the state or (b) where the business transacted by it within the state constitutes interstate commerce. Therefore, while the decision in any case depends on *exactly* what the foreign corporation is doing (which in practice always involves difficult questions of fact as well as law), nevertheless there are certain principles which run through all the decisions:

(The canner is assumed to be a corporation domiciled in State A.)

"(1) When goods are sold by a canner incorporated in State A, either through a broker or his own salesmen in State B, and are deliverable from stocks warehoused by the canner in State B but not delivered in the original package, this is an intrastate transaction within State B. The canner is doing a local business of the same nature as merchants located in State B.

"(1-A) There is some authority for the proposition that where goods sold by a canner incorporated in State A, either through a broker or his own salesmen in State B, and are deliverable from stocks warehoused by the canner in State B but *always kept in the original package*, this is interstate commerce.

But the rule is not well enough established generally to be relied upon.

"(2) When orders are taken in State B, submitted to the canner in State A where the canner is domiciled, and the goods shipped into State B simply to fill orders, it is interstate commerce and does not constitute doing business within State B.

"(3) When salesmen representing a canner domiciled in State A solicit orders in State B for the canner's goods for the account of and to be distributed to the retailer by a resident wholesale grocer, this is domestic business in State B—inducing one local merchant to buy a particular class of goods from another—even though none of the canner's goods to which the canner retains title are within the State B until after orders are given by the wholesalers, and this would be doing business by the canner within State B.

"As authority for propositions (1), (2), and (3) see *Cheney Brothers Co. vs. Massachusetts*, 246 U. S. 147.

"There is a situation which arises when the canner domiciled in State A consigns goods to a factor or commission merchant in State B and the factor or commission merchant stores the goods and sells them in his own name. In these cases *even though title is retained by the canner*, if the business of selling the goods can fairly be said to be that of the commission merchant or factor, there is considerable authority for the proposition that the canner is not doing business within the state. There is always a strong chance, however, that the contract between the canner and the commission merchant will be held one of agency in which case the canner would be considered as doing business within the state. A middle ground is the view that whether or not the canner is doing business within the state because of sales by the factor to third persons, nevertheless, a suit by the canner against the factor cannot be prevented by state law for the dealings between the canner and factor certainly constitute interstate commerce. The federal courts will at least go to this extent. The cases on the subject are collected in a note in *L. R. A.*, 1916 F. 334. *The only general statement that will fit all the cases bearing on the question is that they are numerous, varied and inharmonious.*

"(4) If the local dealer purchases the goods direct from the canner the business transaction between the parties is interstate commerce pure and simple."

Army Asks Bids on Canned Tomatoes

The War Department announces that it will open bids on August 9, 1927, on 175,536 No. 2½ cans of tomatoes, in commercial cases, to be delivered at Warehouse B-2, Fort Mason, San Francisco, California, by Sept. 15, 1927, for shipment to other specified points on the Pacific Coast.

Bids are also invited on 283,416 No. 2½ cans of tomatoes, in lacquered cans, and strapped export cases, to be delivered at Fort Mason on or about Sept. 20, 1927, and to be completed by December 31, 1927.

Canners interested may obtain Circular No. 28-11-Subs., on which to submit bids, from the Quartermaster Supply Officer, Fort Mason, San Francisco, California.

Wholesale Food Prices

The Bureau of Labor Statistics, U. S. Department of Labor has published in bulletin form a list of wholesale prices of various commodities for June 1927. The following prices will be of interest to canners:

	June 1926	June 1927	Index number. June 1927 (1913=100.)
Salmon, Canned, Alaska red, per doz., factory	3.495	2.675	183.2
Peaches, canned, Calif., standard No. 2½s	1.90	1.775	117.0
Pineapple, canned, Hawaiian, standard, sliced, No. 2½s	2.15	2.25	109.6
Corn, canned, Maryland, standard	0.875	0.975	153.7
Peas, canned, New York and Western No. 5s	1.375	1.225	141.4
Tomatoes, canned, New Jersey, standard, No. 3s	1.40	1.50	115.4
Meats, average	142.3
Butter, cheese and milk, average	145.8
Other foods (including above canned foods), average	149.4

Water Softening Compounds

Any system intended for softening water to be used in blanching or in the production of brine to be added to food, should be of such nature that it can be managed by factory help. Otherwise, the constant attention of a chemist is necessary. When any other system is employed the water is likely to be made so alkaline at times that it will injure the flavor of the food and will interfere with processing to such an extent as to cause spoilage.

Our attention has been called, this week, to a water softening compound that has been offered to canners as suitable to add to water intended for blanching and for the preparation of brine. This preparation was a solution of tri-sodium phosphate with the addition of a small amount of aluminum compound.

Such a preparation cannot be used with safety by the usual factory help.

Retail Prices

The retail food index issued by the Bureau of Labor Statistics, U. S. Department of Labor, indicates an increase of 2% in retail food prices on June 15, as compared with May 15, and a decrease of about eight-tenths of one percent since June 15, 1926.

Freight Rate Decision

The Interstate Commerce Commission has published its decision in the cases of Mobile Chamber of Commerce and Business League vs. Alabama & Vicksburg Railway Company et al, Florence Chamber of Commerce vs. Alabama Great Southern Railroad Company et al, and Traffic Bureau of Nashville vs. Louisville and Nashville Railroad Company et al, finding that the rates on canned goods from Mobile, Alabama, to points in Georgia, Mississippi, Tennessee, Kentucky, Missouri, Ohio and Illinois, and from New Orleans, Louisiana, to Nashville, Tenn., are unreasonable, and prescribes reasonable rates for the future. The cases are identified as I. C. C. No. 15515, No. 15287, and No. 17003 respectively.

Revenue Freight Loadings

Loadings of revenue freight for the week ended on July 9, totaled 839,308 cars, a decrease of 181,954 cars under the preceding week, due to the observance of the Fourth of July. Compared with the corresponding week last year, there was a decrease of 58,248 cars, and a decrease of 147,585 cars under the same period in 1925, which did not include a holiday. All districts reported decreases in the total loading of all commodities compared not only with the corresponding period in 1926, but also with the corresponding period in 1925.

Sorting Cherries

As cherry canners know, the Government has made seizures of cherries in previous years because of the presence of worms (curculios and maggots) and decayed fruit. In view of the light crop this year and the smaller amount of fruit available, it is probable that the percentage of cherries containing worms

is considerably larger than it would be with a heavier crop. Therefore, notwithstanding the care that has been taken in spraying the fruit, it is important to use the utmost diligence in inspecting the raw product.

Wind bruises or tree bruises afford an easy entrance to molds through the skin of the cherries, and a considerable percentage of the bruised spots are also decaying. If the spot is barely discolored and is not at all sunken below the natural contour of the cherry, and if the discoloration does not extend into the flesh of the cherry, decay is probably absent. Where the bruised spot is more or less "sunken", decay is probably present as can often be seen by the discolored flesh of the cherry immediately below.

Cherry canners now commonly sort their raw product over a moving belt, but this is not always properly done. The following points should be kept in mind:

- (1) The sorting belts should not be too wide. A width of 18" or 20" is probably the maximum that can be used advantageously.

- (2) The belt should not be too long; at least, there is no advantage in having it longer than is necessary to accommodate about six sorters. To do the work efficiently, it is necessary to have enough belts so that a few sorters on each belt can handle the volume of fruit at hand.

- (3) The belt must move slowly. Even with the best light, sorters cannot detect small decaying spots on belts moving from 30 to 40 feet per minute. The best results can be obtained on a belt moving about 12 feet per minute. This speed should not be greatly exceeded.

- (4) The belt must be adequately lighted. When natural light is not adequate, artificial light should be installed at a proper height above the belt and shaded from the eyes of the sorters.

- (5) Sorters should be properly supervised and instructed to remove all cherries containing any decayed portion, no matter how small. Where no automatic device is installed for turning the cherries over, the hand should be brushed over them so that the undersides will be exposed.

- (6) The belt should not be overloaded. The number of cherries on the belt should not cover more than about half the belt surface at the maximum. Where the cherries are piled up or even when a single solid layer covers the belt, adequate inspection is impossible.

Government inspectors are now visiting cherry plants. Cannerymen should not assume that their products are satisfactory merely because these inspectors do not criticize conditions. It is not their custom to criticize conditions, but when they see sorting improperly done, they are likely to report that fact to their headquarters office and shipments will be inspected later.

The Government has announced that it will be more stringent in its requirements than it has been before, and cherry canners are urged to give careful attention to these matters. The suggestions given above are necessary to comply with the Government's requirements.

Great Britain Requires Mark of Origin on Imported Trade-Marked Goods

Under an Act which became effective June 15, all trade-marked goods imported into the United Kingdom must bear a mark of origin.

All indications of origin must be conspicuous and in close proximity to the marks which they are intended to qualify. The purpose of this new law is to prevent any foreign goods from being sold, distributed or advertised for sale, which bear any name or trade mark which might lead the purchaser or distributor to assume they are British products.

It appears that the test employed by the British customs officials is whether goods sold under a particular trade mark or name have been, through sale in the United Kingdom, identified with a particular concern. Thus, if a line of American goods is handled by a British concern, an inference might be drawn that the trade mark or name purports to be that of a manufacturer, dealer or tradesman in the United Kingdom, even though it is owned by the American producer, and not registered in the United Kingdom. Under this interpretation, it would seem advisable to show a mark of origin in connection with any goods shipped to the United Kingdom under a trade mark or trade name.

The Department of Commerce urges American exporters to study the provisions of the Act carefully in order to avoid difficulties with their shipments.

Canned Food Market in Dutch East Indies

The Dutch East Indies offer a good market for canned peaches, pears and apricots, according to the American consul at Batavia. Canned fruit imports during 1926 amounted to 3,214,246 pounds, of which the United States furnished 2,524,082

pounds. The only vegetables sold in any quantities are peas and asparagus, chiefly from the United States.

Sardines are the chief canned fish imports, coming largely from the Pacific Coast. Imports in 1926 totaled 7,330,639 pounds, of which the United States furnished 6,659,613 pounds. Salmon imports amounted to 814,235 pounds, the United States supplying 382,940 pounds.

French Tariff Revision Postponed

According to a report received from the Department of Commerce, the French Parliament adjourned on July 14, without discussion of the schedule of proposed tariff revision which was referred to in our Information Letter No. 217, dated July 16.

Further action on this bill is not expected until after Parliament reconvenes in October.

Foreign Trade Notes

The American consul at Bordeaux, in a recent report expresses the opinion that sales of American canned fruits can be extended in that part of France by an advertising campaign, especially one that would stress the fact that even at existing high prices in France, canned foods are not an expensive food.

The American consul at Brussels reports that large quantities of California sardines are imported into Belgium, both plain and in tomato sauce. The most satisfactory sized container for Belgian consumption is the 15-ounce can.

Freight Rate on Cans

The Interstate Commerce Commission has investigated the rate on empty tin cans, in carloads, from Baltimore Maryland, to Brooklyn, New York, and has found the rates unreasonable and awarded reparation. The case is Metal Package Corporation of New York vs. Baltimore & Ohio Railroad Company et al, and is identified as I . C. C. 18015.